UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
	)	Criminal No.: 3:00-CR-400-P
v.	)	
	)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and	)	
BENNETT T. MARTIN,	)	
	)	FILED: April 30, 2001
Defendants.	)	

RESPONSE AND BRIEF OF THE UNITED STATES
IN OPPOSITION TO MOTION FOR DISCOVERY OF NAMES
OF GRAND JURY WITNESSES AND WITNESSES THAT WILL TESTIFY AT TRIAL

I
INTRODUCTION

Defendants have filed a *Motion for Discovery of Names of Grand Jury Witnesses and Witnesses That Will Testify at Trial* ("Motion") asking this Court to compel the production of the United States' list of witnesses it plans to call at trial along with any record of felony convictions of such witnesses, as well as a list of all persons who testified before the grand jury which returned the instant Indictment. This Motion should be denied because: (1) it is well-settled that the United States need not turn over its list of trial witnesses; and (2) Rule 6(e) secrecy provisions prohibit the release of names of witnesses who testified before the grand jury.

II
DEFENDANTS ARE NOT ENTITLED TO THE UNITED STATES' LIST OF TRIAL WITNESSES

The law is well-settled that defendants have no right to a list of the government's witnesses. Weatherford v. Bursey, 429 U.S. 545, 559 (1977) ("It does not follow from the prohibition against concealing evidence favorable to the accused that the prosecution must reveal

before trial the names of all witnesses who will testify unfavorably."). Indeed, discovery in criminal cases is narrowly limited. United States v. Fischel, 686 F.2d 1082, 1090 (5th Cir. 1982). "Rule 16, which addresses the scope and manner of criminal discovery, makes no provision for the production of the names and addresses of witnesses for the government." Id.

Instead, it is within the Court's discretion to order disclosure of the government's witness list. As the Fifth Circuit stated in United States v. Edmonson, 659 F.2d 549, 551 (5th Cir. 1980), "the granting of a defense request for a list of adverse witnesses is a matter of judicial discretion, and denial can be challenged only for abuse." The Edmonson court held that there was no abuse of discretion in denying the defendant's motion for disclosure of witness identity. Id. Cf. United States v. Hancock, 441 F.2d 1285, 1286 (5th Cir. 1971), cert. denied, 404 U.S. 833 (1971) (rejecting notion that denial of motion for list of government witnesses implicated defendant's rights under Fifth and Sixth Amendments); Downing v. United States, 348 F.2d 594, 599 (5th Cir. 1965), cert. denied, 382 U.S. 901 (1965) (denying motion to produce government witness lists when defendants provided no grounds for the motion).

Defendants citation of United States v. Madeoy, 652 F. Supp. 371 (D.C. 1987) is neither apposite to the issue, nor binding on this Court. Defendants in Madeoy faced 121 counts charging conspiracy, fraud and various RICO violations. Id. The government planned to call seventy witnesses and there were thousands of documents to be reviewed. Id. No such considerations exist in the case at bar. In addition, defendants here fail to note that the Madeoy court set forth rules to apply when evaluating such a motion. Important among those directives was that "[m]ere conclusory statements that the list is necessary for preparation of trial is not sufficient." Id. at 376 (citing United States v. Cannone, 528 F.2d 296, 302-03 (2nd Cir. 1975)).

Although they have relied on Madeoy, defendants have ignored the rule set forth therein. Without any specific justification, defendants state only that they need the list.[1]

For similar reasons, defendants' citation of United States v. Savides, 661 F. Supp. 1024 (N.D. Ill. 1987) carries no weight. This decision was issued by a district court from outside of the Fifth Circuit, and it is factually inapposite.

Defendants have made no showing of the necessity of the release of the United States' witness list to them. Moreover, the clear weight of binding Fifth Circuit authority indicates that they have no right to such a list. Accordingly, the United States respectfully requests that this Court deny defendants' Motion as it applies to the discovery of the government's witness list.

III
THE UNITED STATES IS AWARE OF ITS DISCOVERY OBLIGATIONS

The defendants' Motion also requests any record of felony convictions of potential government witnesses. Presumably the defendants want this information as possible impeachment material. However, the government has disclosed all Brady/Giglio information currently known to the government to the defendants. At this time, the United States is unaware of any felony records for any of its potential witnesses. In accordance with its ongoing Brady/Giglio obligations, if any such information becomes known to the United States, it will disclose that information to the defendants.

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[1] Defendants misapply Madeoy in another context. They cite the case for their premise that complexity of the issues presented for trial compels the disclosure of witness lists. The Madeoy Court made no such pronouncement. Instead, in rejecting defendants' argument that their indictment was void for vagueness, the Court held: "In the context of this wide-ranging but otherwise rather uncomplicated scheme, the court has no difficulty in finding that the indictment meets this test." Id. at 374 (emphasis added). So, in no way did the Court link complexity of trial issues with the need for disclosure of the government's witness list.

IV

DEFENDANTS HAVE NO RIGHT TO
A LIST OF WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY

Federal Rule of Criminal Procedure 6(e) provides a prohibition on disclosure of "matters occurring before the grand jury." Fed R. Crim. P. 6(e)(2). Defendants' discovery motion is governed squarely by the secrecy provisions of Rule 6(e) and the clear weight of precedent dictates that their Motion must fail.

The rationale for maintaining grand jury secrecy has been clearly stated by the Supreme Court:

> First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Douglas Oil v. Petrol Stops Northwest, 441 U.S. 211, 219 (1979).

In order to effectuate these objectives, the scope of grand jury secrecy is necessarily broad. Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 869 (D.C. Cir. 1981). It encompasses not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal "the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like." Id. (citing SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980), cert. denied, 449 U.S. 993 (1980)). Accord, United States v. White

Ready-Mix Concrete Co. et al., 509 F. Supp. 747, 750 (N.D.Ohio 1981) ("The weight of authority holds that witnesses' names are matters occurring before the grand jury."); In re Grand Jury Proceedings, 806 F. Supp. 1176, 1178 (D. Delaware 1992).

In addition, there is no general criminal discovery right to learn the identity of witnesses who testified before the grand jury. As the Fifth Circuit stated in United States v. Briggs et al., 514 F.2d 794, 804 (5th Cir. 1975):

> One indicted by a grand jury . . . is not entitled to know the identity of the witnesses who testified concerning him, and even after the grand jury has completed receiving evidence, its evidence is unavailable to him. He may not demand a statement of reasons supporting the body's conclusion. The evidence and the witnesses underlying the grand jury's action surface, if at all, at a criminal trial.

Defendants here have done nothing in their Motion but make a bare request for the identity of the grand jury witnesses. Their request is clearly contradicted by the prevailing law, which doubtless accounts for the absolute lack of authority cited in support of their Motion. Based on the foregoing, defendants' Motion for a list of witnesses who testified before the grand jury who returned the Indictment in this matter is clearly out of bounds and must be denied.

V
CONCLUSION

For the foregoing reasons, the United States respectfully requests the Court to deny defendants' Motion.

Respectfully Submitted,

"/s/"

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 27th day of April, 2001. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 27th day of April 2001.

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